IN THE SUPERIOR COURT OF CLARKE COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	*	
	*	
vs.	*	Indictment No.
	*	17,032-34
RONALD FINCHER	*	

JUDGMENT SUSTAINING MOTION
TO SUPPRESS EVIDENCE

The motion to suppress evidence filed by the Defendant in the above referred to case coming before the Court for hearing pursuant to notice given, after hearing argument of counsel the following judgment is entered:

It was stipulated at the hearing that no evidence was offered to the Magistrate other than the affidavit attached to the search warrant which is a part of the record in this case.

A properly certified copy of the order entered by the Judge of the Magistrate's Court of Clarke County on December 17, 1980 appointing Herbert T. Hutto as judge pro hac vice of the Magistrate's Court of Clarke County and of his oath of office as such were introduced into evidence, and no evidence in conflict therewith was offered by the Defendant; and the Court finds as a matter of fact and as a matter of law that Herbert T. Hutto was at the time of the issuance of the search warrant a judge authorized to

receive evidence and issue search warrants in Clarke County under the law of the State.

With respect to whether probable cause existed for the issuance of the search warrant, a unique situation is presented involving triple hearsay. The chain of communication by which the information necessary to authorize the issuance of the search warrant reached the Magistrate was as follows: Source A furnished certain information to the affiant; Source B furnished certain information as to what had allegedly transpired at the Defendant's home to Source A; and the Defendant allegedly furnished certain information (the identification of the substance in question as cocaine and the presence at the Defendant's residence of additional cocaine which could be obtained subsequently) to Source B. The Court is thus confronted with "hearsay on hearsay on hearsay." This objection is not fatal to the issuance of the search warrant; but it does require that the reliability of each informant be established by one of the measures recognized by law. See Smith v. State, 136 Ga. App. 17.

The reliability of Source A in this case was adequately established by the affiant's testimony to the magistrate as to his knowledge about Source A and his character and reliability. See Davis v. State, 129 Ga. App. 158(3), and Miller v. State, 155 Ga. App. 399.

The reliability of Source B is sought to be established by the fact that his actions and statements were against his penal interest. The state relies on U.S. v. Harris, 403 U.S. 573, 91 S. Ct. 2075 and Smith v. State, supra. The fallacy in the State's position is that nowhere does it appear in the affidavit that Source B was aware that he was talking to an informer or voluntarily subjecting himself to any penal liability in making the statements allegedly made by Source B to Source A. The essence of the rule permitting the reliability of an unnamed informer to be established by a statement against his penal interest is that he be consciously aware that he is acting against his own self interest in making the statement. Absent such an awareness, the statement ceases to vouch for the credibility of the informer. Neither barroom braggadocio, nor casual conspiracy carry the assurance of credibility which is presented by a solemn admission or confession of participation in the specific criminal conduct under investigation. See U.S. v. Harris, supra.

No effort whatever was made to establish the credibility of the third party, Fincher (the defendant); and yet the entire search warrant rests on his hearsay statements that the substance exhibited by Source B to Source A was in fact cocaine, and on Fincher's statement to Source B that additional cocaine could be secured at the premises in the future.

Because of a failure to adequately establish the reliability of either Source B or of Fincher (both of whose statements were essential to the validity of the search warrant), the motion to suppress evidence is sustained.

Wherefore, it is ordered that on the rendition of the final judgment in this case the State return to the Defendant any items seized in the execution of the search warrant that do not constitute contraband, and that the State is barred in the trial of this case from offering any testimony as to the execution of the search warrant or anything found pursuant thereto.

This June 11, 1981.

/s/ James Barrow
Judge of the
Superior Court
of Clarke County

FEB 23, 1982

62749. THE STATE v. FINCHER. P-189

POPE, Judge.

This is an appeal by the State from the suppression of evidence in a criminal case involving a violation of the Controlled Substances Act. The trial court determined tht the search warrant used in obtaining the evidence was not based upon probable cause because the reliability of an undisclosed source was not adequately shown.

The warrant was issued solely upon the affidavit of a police officer, which stated that he was contacted by an undisclosed informant referred to as Source A. Source A had been known to the officer for three years, was regularly employed, had no criminal record, and had in the past provided reliable information to police. It is undisputed that Source A's reliability was adequately shown by the affidavit. However, Source A's information was based upon his observation of and information received from another undisclsed source. The officer's affidvit stated in pertinent part: "Source A stated that it was contacted by a second source, hereafter referred to as Source B. Source B stated to Source A within 10 days of February 20, 1981 that it could get some cocaine from [certain] premises. Within this 10 days of February 20, 1981, Source A

and Source B went to the [described] premises, Source B went into the above residence and Source B came back to Source A's vehicle and exhibited what was represented to be cocaine by Ronald Fincher [the defendant] to Source A. Source B further stated to Source A it would be able to get more at any time."

The defendant contends the affidavit was insufficient to show the reliability of Source B. "'Where the hearsay of an informer is relied upon, the affidavit must meet two tests: (1) the reasons for the informer's reliability must be furnished and (2) it must either state how the informer obtained the information or the tip must describe the criminal activity in such detail that the magistrate may know it is more than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation.' [Cit.] The affidavit in the present case gives sufficient reasons to establish the reliability of the first source. [cit.] Further, the affidavit stated how the first source obtained his information." King v. State, 139 Ga. App. 246, 248 (228 SE2d 172(1976). "These rules governing the evaluation of information from the primary unnamed informant govern also evaluation of information from the secondary sources." State v. Henderson, 40 Or. App. 27, 30 (594 P2d 419)(1979).

The affidavit established the fact that Source A received information from Source B to the effect that Source

B could obtain cocaine from a certain location. Source A went with Source B to the location referred to and observed Source B go into the defendant's garage apartment and return to the Source A's car. Source B displayed to Source A what was represented to be cocaine by the occupant of the apartment to Source B. Source A sufficiently verified Source B's story through his direct observations so as to establish a substantial basis for crediting the hearsay of the second source. Just as independent police investigation corroborating an informant's statements buttresses the reliability of that informant, United States v. Brand, 556 F2d 1312 (9) (5th Cir. 1977), cert. den. 434 U. S. 1063 (1977), rehg. den. 435 U. S. 961 (1977), so too can a reliable informant verify his source of information. This verification sufficiently established the reliability of Source B in the present case. It was shown that Source B obtained his information by direct observations. He saw the defendant provide him with cocaine. This information is corroborated by Source's A's observation of Source B entering the apartment nd returning with the alleged cocaine he displayed to Source A. There was sufficient data in the affidavit for the magistrate to determine that Source A was probably truthful when he told that Source B had observed defendant with the controlled substance. State v. Henderson, supra. We hold therefore that the affidavit was sufficient to establish probable

cause and the trial court erred in granting the motion to suppress the evidence so obtained.

Judgment reversed. Quillian, C. J., and McMurray, P. J., concur.

AFFIDAVIT FOR AN ATHENS, CLARKE COUNTY MAGISTRATE'S SEARCH WARRANT FOR THE ENTIRE PREMISE OF 185 HOLMAN AVENUE BEING A GRAY TWO STORY GARAGE APARTMENT WITH GREEN TRIM BEING TO THE REAR OF 181 HOLMAN AVENUE IN THE CUSTODY AND CONTROL OF RONALD FINCHER LOCATED IN ATHENS, CLARKE COUNTY, GEORGIA.

On February 20, 1981 affiant was contacted by a concerned citizen, hereafter referred to as Source A. Source A is believed to be reliable in that it has been known by affiant for over three years. It is regularly employed, concerned about the drug traffic and known to be reliable and truthful. Affiant knows of own personal knowledge Source A has no police record, it has provided information to affiant that when checked it has been proven to be truthful. Source A wishes to remain confidential.

Source A stated that it was contacted by a second source, hereafter referred to as Source B. Source B stated to Source A within 10 days of February 20, 1981 that it could get some cocaine from the above described premises. Within this 10 days of February 20, 1981, Source A and Source B went to the above described premises and Source B came back to Source A's vehicle and exhibited what was represented to be cocaine by Ronald Fincher to Source A. Source B further stated to Source A it would be able to get more at any time. Affiant personally observed the above

APPENDIX C

residence for the physical appearance. A check with local utilities shows Ronald Fincher to reside at the above premises.

For the above reasons affiant has probable cause to believe there is now a quantity of cocaine within the above-described premises.

/s/George A. Garrison
AFFIANT

Sworn to and subscribed before me this 20 day of February 1981.

/s/ Herbert T. Hutto
JUDGE